

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 JUN 13 AM 10:14

SANDRA K HARKHAH, CLERK

BY: A. CASGIO

DERIENZO AND WILLIAMS, P.L.L.C.

State Bar #00510200

3681 N. ROBERT ROAD

PRESCOTT VALLEY, AZ 86314

TEL.: (928) 759-5572

FAX: (928) 759-5573

Email: yavapailaw@hotmail.com

Craig Williams

Attorney at Law

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN DEMOCKER,

Defendant

P

\1300CR201001325

**Reply, re: Expedited
REQUEST FOR DISCLOSURE**

(Hon. Warren Darrow)

The Defendant, by and through Counsel undersigned, hereby Replies to the state's Response. This Request for the following items of discovery is made pursuant to Rules 15.1 and 15.6, Arizona Rules of Criminal Procedure, and Brady v. Maryland, 373 U.S. 83 (1963).

The state's Response to the Expedited Request for Disclosure contained this quote:

The Jarell Report detailed each person's duties in the County Attorney's Office, and their *limited involvement* in viewing and or printing of the subject documents."

(Response to Request for Disclosure, pg. 2).

"Limited involvement?" No, the two Reports that were generated by the Yavapai County Clerk's Office regarding sealed and/or ex parte pleadings in this case revealed a tremendous amount of involvement in viewing and/or printing of the subject documents. With respect, the Defense does NOT have to rely on a self-serving in-house investigation by the County Attorney.

The Jarell Report is pure propaganda. The limited information included in the Jarell Report about these employees is lacking in fundamentally important ways:

- 1) The work assignments for the employees, both past and present, of each secretary, paralegal, attorney, victim witness advocate; and
- 2) The employees' supervisors; and
- 3) Which attorney, or attorney group each employee was assigned to; and
- 4) What division of the Yavapai County Attorney each employee was assigned to.

The state claimed the information requested by the Defense regarding the assignments of its employees was "not relevant." One can see why they do not want the information released. That does not affect the relevancy of the information. There was a widespread clandestine attack on court-ordered sealed ex parte documents (and court-ordered sealed documents) by the Yavapai County Attorney. The state has admitted that they did what they were accused of:

"In its Response¹, the State admitted the employees identified in the defendant's request for disclosure viewed and or printed some of the subject documents."

(Response to Request for Disclosure, pg. 2).

However, the state admitted it only because they had to admit it. Now, the state seeks to hide behind a declaration that there is a "lack of prejudice" and "no 6th Amendment violation." The state's declaration is a red herring. Any analysis of the state's violations in regard to the ex parte documents cannot begin and end with just the 6th Amendment.

It is vitally important for the Defense to have the real, unfiltered, and unbiased information as to each employee, from July 2008 through the present. These employees did not work in a vacuum. Somebody in a position of power at the County Attorney instructed its employees to view and/or print Court-ordered sealed ex parte documents -- over and over -- for a very long time. The County Attorney is responsible to the actions of her employees.

Arizona Rules of Professional Conduct, E.R. 5.3., "Responsibilities Regarding

1. To the Motion to Dismiss.

Nonlawyer Assistants,” states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm *shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;*

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

© *a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:*

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(ER 5.3, italics added).

In this case, non-lawyers viewed (and printed) ex parte documents an incredible 46 times, and viewed/printed sealed documents 79 times.

The one party that we know did not invade court-ordered sealed ex parte documents – the Defense – must not be kept in the dark about who worked for whom, and during what time period, at the Yavapai County Attorney. That is why there are disclosure Rules – to shine a light in the dark. Rule 15.6, Arizona Rules of Criminal Procedure, "Continuing duty to disclose," states:

a. Continuing Duties. The duties prescribed in this rule shall be continuing duties and each party shall make additional disclosure, seasonably, *whenever new or different information subject to disclosure is discovered.*

(Italics added).

Rule 15.1(f), "Disclosure by Prosecutor," states:

The prosecutor's obligation under this rule extends to material and information in the possession or control of any of the following:

(1) The prosecutor, *or members of the prosecutor's staff ...*

(Italics added).

Rule 15.1(g) states:

g. Disclosure by Order of the Court. Upon motion of the defendant showing that the defendant has substantial need in the preparation of the defendant's case for material or information not otherwise covered by Rule 15.1, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

The Defense currently does not have a source of information about who worked for whom, and during what time period, regarding the County Attorney employees, and has a substantial need for the list. Since the timing of the events took place over a two-year period, it would be unduly burdensome to require the Defense to recreate what the state could easily generate with very little effort. Because of the allegations contained in the Motion to Dismiss, as well as the state's admissions regarding those allegations, this information is Brady material, and must be disclosed. The U.S. Supreme Court held:

As long ago as Mooney v. Holohan, 294 U.S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.' This was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942). In Napue v. Illinois, 360 U.S. 264 (1959), we said, '(t)he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.' *Id.*, at 269. Thereafter Brady v. Maryland, 373 U.S., at 87, 83, held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution.' See American Bar Association, Project on Standards for Criminal Justice, Prosecution Function and the Defense Function s 3.11(a). When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this

general rule. Napue, supra, at 269.

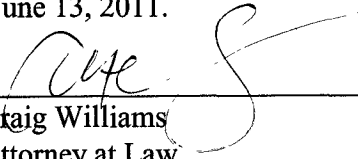
Giglio v. U.S., 405 U.S. 150, 153-154 (1972).

In its Response to the Motion to Dismiss, the state requested an evidentiary hearing, which would require all of its listed employees to testify, as well as their supervisors. In order for the Defense to adequately prepare for this testimony, the state will have to reveal *who those supervisors were at the time*. All of the state's responses regarding *why* anyone was looking Court-ordered sealed documents are murky, misleading and self-serving. Evidence affecting the County Attorney employees' credibility – who worked for whom, and during what time period, and what were their instructions regarding Court-ordered sealed ex parte documents -- require disclosure. (Paraphrasing Giglio, supra).

In addition, the information about who worked for whom, and during what time period, at the Yavapai County Attorney is a public record. This information should be available to the public. As such, the objection to the disclosure of the requested information is merit-less.

In order for the Defense to adequately prepare a Reply to the state's Response re: Motion to Dismiss for Prosecutorial Misconduct *or* Motion to Disqualify the Yavapai County Attorney's Office the requested records must be supplied.

RESPECTFULLY SUBMITTED this June 13, 2011.



Craig Williams
Attorney at Law

Copies of the foregoing delivered this date to:
Hon. Warren Darrow, Judge of the Superior Court
Jeff Paupore, Steve Young, Yavapai County Attorney's Office
Greg Parzych, Attorney for Defendant
The Defendant

By:  _____